

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

AUSTIN AIR SYSTEMS, LIMITED,

Plaintiff,

v.

DECISION
and
ORDER

SAGER ELECTRICAL SUPPLY COMPANY, INC., and
ebm-papst Inc.,

19-CV-562Si(F)

Defendants.

In this case, the parties dispute whether Defendants should be permitted to have a fully anti-COVID 19 vaccinated attorney present at the Fed.R.Civ.P. Rule 30(b) ("Rule 30(b)") deposition of Plaintiff's representative, Lauren McMillan ("McMillan"), scheduled for June 15, 2021. Defendants move to compel such participation. Dkt. 76. In opposition, Plaintiff moves for a protective order. Dkt. 78. Defendants have agreed to conduct the deposition questioning of McMillan by other Defendants' counsel via Zoom.

Defendants assert they require the presence of an attorney at the deposition to facilitate Defendants' assessment of McMillan's demeanor and credibility. The Court has broad discretion in supervising the conduct of the Rule 30(b) oral deposition, *Reserve Solutions, Inc. v. Vernaglia*, 2006 WL 1982780, at * 1 (S.D.N.Y. July 7, 2006) (citing *Wills v. Amerada Hess Corp.*, 379 F.3d 32, 41 (2d Cir. 2004)); the party requesting a protective order pursuant to Fed.R.Civ.P. 26(c) has the burden to establish undue oppression or harassment. *CBS, Inc. v. Ahern*, 102 F.R.D. 820, 822 (S.D.N.Y. 1984). While it may be an arguable point, the court has recognized a deposing party has a valid interest in personally assessing the credibility of the deponent during the conduct of an oral deposition as reasonably necessary to the effective conduct of the

deposition. *Dingelday v. VMI-EPE-Holland B.V.*, 2018 WL 2119618, at * 2 (W.D.N.Y. May 8, 2018) (observing in-person deposition may allow deposing party to better assess the deponent's credibility).

Here, on this record the court finds Plaintiff has failed to particularize an overriding safety or health related concern to justify excluding Defendants' attorney from participating in person in McMillan's deposition. Accordingly, Defendants' motion is GRANTED; Plaintiff's motion is DENIED.

SO ORDERED.

/s/ Leslie G. Foschio

LESLIE G. FOSCHIO
UNITED STATES MAGISTRATE JUDGE

DATED: June 14, 2021
Buffalo, New York